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Arlington, VA 22209-3873

In re application of

Bill Kitchen et al.

Application No. 09/867,587

Filed: May 31, 2001

For: BILL AVAILABILITY NOTIFICATION AND BILLING  
INFORMATION REQUEST

**DECISION ON REQUEST  
FOR WITHDRAWAL OF  
ATTORNEY**

This is a decision on the request filed on June 16, 2005, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney in the above-identified application is not approved because the request does not comply with Items A) and B).

As to Item A), the attorneys listed in the request (Customer Number 20457) do not correspond with those named in the Power of Attorney in the declaration, thereby creating confusion as to who is withdrawing. The original Power of Attorney appointed several attorneys. Of these attorneys, Thomas E. Anderson, and Richard J. Stokey are not associated with Customer No. 20457 nor are they included in the list of withdrawing attorneys. The reference to a customer number appears to not include all the attorneys of record. If less than all the attorneys wish to withdraw and a portion of the originally listed attorneys wish to retain power, any renewed request must so state, otherwise the person signing must be signing on behalf of all the attorneys of record.

As to Item B), while a reason may be provided by referencing a specific portion of 37 CFR 10.40, the reason must deal with actions by the client. In this case, there is nothing in the file record that indicates the existence of an assignee or that the assignee is the client. Absent a 3.73(b) statement, the "client" referred to in 37 CFR 10.40 is seen as being those individuals who conferred power upon the attorneys, in this case the inventors.



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SNM/pav: 06/27/05